

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-025

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 2. Form, Style and Placement in Administrative Code

a. The pages of future rule-making orders should be numbered. It is simple for the drafter to do and would be helpful to the Legislative Council Staff and others in reviewing the order.

b. In the table of contents, several of the titles are incorrect. The title of s. NR 166.04 should be “Types of financial assistance available”; the title of s. NR 166.20 should be “Records and records retention”; and the title of s. NR 166.26 should be “Procedure for determining and updating of project priority scores.”

c. Throughout the rule, there are titles which are in incorrect format. Subchapter titles are written in solid capital letters with no underscore. Section titles are written in solid capital letters and underscored. Subsection titles are written in solid capital letters with no underscore. Paragraph titles are written with an initial capital letter and underscored. Subdivision titles are written with an initial capital letter, are not underscored and are enclosed in single quotation marks. [See s. 1.05 (2), Manual.]

d. The material in s. NR 166.01 (2) also should be included in notes to sections in which forms are discussed.

e. In s. NR 166.03 (8), all of the paragraphs should conclude with a period. Also, in sub. (8) (e), the word “through” should be replaced by the word “to.”

f. In s. NR 166.03 (20), the phrase “Examples include” should be replaced by the phrase ““Interim financing costs” include.” The entire definition section should be reviewed for explanatory sentences that should begin with the defined term rather than phrases like “Examples include” or “The term includes.”

g. In s. NR 166.06 (1), pars. (c) to (i) should be renumbered subds. 1. to 7.

h. In s. NR 166.07 (1) (a), “subdivisions (1) to (23)” should be numbered with a number followed by a period (i.e., 1. to 23.). [See, also, s. NR 166.07 (3).]

i. In s. NR 166.14 (1) (b) 2., the word “must” should be replaced by the word “shall.” Also, in par. (b), the first sentence should either be rewritten as an introduction to the following subunits or should be numbered as subd. 1. with the remaining subdivisions renumbered accordingly. The entire rule should be reviewed for this problem.

j. In s. NR 166.15, it appears that an additional paragraph should be created to introduce the material in par. (j) 1. and 2. or subds. 1. and 2. should be renumbered as par. (k) 1. and 2.

k. Section NR 166.15 (1) (k) refers to material that is incorporated by reference in ch. NR 166. The department should ensure that the requirements of s. 227.21, Stats., have been met.

l. Section NR 166.20 is not divided into two or more subunits. Consequently, the notation “(1) REQUIREMENTS.” should be deleted.

m. In s. NR 166.25, if the sentence begins with a number, the following number in parentheses should be deleted. [See s. 1.01 (6), Manual.]

n. In s. NR 166.25 (1) (a) 1., “Acute contaminants:” should be the title of the subdivision and, therefore, should be replaced with ““Acute contaminants.’.” This comment also applies to subd. 2. and par. (b) 1. and 2.

o. In s. NR 166.25 (1) (a) 1. b., the material in parentheses should be deleted, set off by commas or included in a note to the subdivision paragraph. This comment also applies to par. (b) 1. b. and sub. (3) (c). [See s. 1.01 (6), Manual.]

p. In s. NR 166.25 (1) (a) 2., the acronyms should be deleted or defined. This comment also applies to par. (b) 2. [See s. 1.01 (8), Manual.]

q. In s. NR 166.25 (1) (a) 2. a., “THM” should either be spelled out or defined. [See, also, SCADA in s. NR 166.25 (3) (i).]

r. In s. NR 166.25 (1) (b) 2. a., “five (5)” should be replaced with “5.” [See s. 1.01 (5), Manual.]

s. In s. NR 166.25 (1) (b) 2., subpar. a. should be followed by subpar. b. or the text should be combined with that of subd. 2.

t. Section NR 166.25 (3) must have a title to be consistent with subs. (1) and (2). [See s. 1.05 (1), Manual.]

u. In s. NR 166.25 (5), the word “through” should be replaced by the word “to.”

v. In s. NR 166.27 (1), the phrase “as per” should be replaced by the word “under.” [See, also, s. NR 166.14 (3).]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the statutory authority section of the analysis, should a citation to s. 281.59 (14) be included? Also, the statutes should be listed in numerical order as follows: “ss. 227.11 (2) (d) and 281.61 (2), (6) and (12) (a) and (b).” Finally, it appears that the citation to s. 227.11 (2) (d), Stats., is incorrect. It appears that a citation to s. 227.11 (2) (a), Stats., may be more appropriate.

b. In the SECTION 1 treatment clause, “Chapter” should be inserted before “NR 166.”

c. In s. NR 166.03 (33), it would be more helpful to cite s. NR 166.06 (1) instead of s. NR 166.06.

In s. NR 166.03 (42), the correct citation is “ss. NR 809.76 and 809.77.”

d. In s. NR 166.03 (43), the citation to ch. 196, Stats., should be to s. 196.01 (5), Stats.

e. In s. NR 166.04 (intro.), the period after “Adm” should be deleted. This comment also applies to s. NR 166.16 (2).

f. In s. NR 166.07 (2) (L) 2., “subdivision (1)” should be replaced with “subd. 1.”

g. In s. NR 166.08 (2), “stats.” should be capitalized.

h. In s. NR 166.11 (5), “Adm. 35” should be replaced with “ch. Adm 35.”

i. In s. NR 166.14 (3), the phrase “per (1) or (2) above” should be replaced by the phrase “under sub. (1) or (2).”

j. In s. NR 166.22 (2), “ss.” should be replaced with “s.”

k. In s. NR 166.25 (1) (a) 2. a., “letter c below” should be replaced with “subpar. c.”

l. In s. NR 166.25 (1) (a) 2. b., “s.” should be inserted before “NR.” Also, “letter a. above” should be replaced with “subpar. a.”

m. In s. NR 166.25 (1) (b) (intro.), “subd.” should be inserted before “1.” and a period should be inserted after “2”.

n. In s. NR 166.26 (1), “ch. NR 166” should be replaced with “this chapter.”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In s. NR 166.02 (title), “and cross referencing” is confusing and should be deleted.
- b. In s. NR 166.03 (19), “can be” should be replaced with “is.”
- c. In s. NR 166.03 (25), ‘Maximum contaminant level’ and ‘MCL’ should be enclosed in double quotes. Also, the phrase “which are excluded from this definition” appears to be redundant and, if so, should be deleted.
- d. In s. NR 166.03 (26), “Exceedance” should not be capitalized. Also, a comma should be inserted after “means.”
- e. In s. NR 166.03 (30), to be consistent with the rest of the sentence, it appears that “records” should be replaced with “record keeping.”
- f. In s. NR 166.03 (31), “Wisconsin” should be deleted because “DOA” is defined as a Wisconsin agency. Also, this subsection makes a reference to the term “mobile home park.” This appears to be the only reference to a mobile home park in the entire rule. A mobile home park is not a local governmental unit under the definition in sub. (22). It appears that there is no reason for the inclusion of the term “mobile home park.”
- g. In s. NR 166.03 (38), “U.S.” should be inserted before “Environmental Protection Agency” and “Environmental Protection Agency” should not be capitalized. [See, also, subs. (11) and (13).]
- h. In s. NR 166.03 (41), the slash should be replaced with “and” or “or.” This comment also applies to s. NR 166.25 (1) (a) 1. c. [See s. 1.01 (9) (a), Manual.] Also, the quotation marks around “positive” should be deleted.
- i. In s. NR 166.03 (42), “Giardia” should not be capitalized.
- j. In s. NR 166.03 (46), a hyphen should be inserted between “Woman” and “owned.” Also, this subsection should be compared to sub. (28) for purposes of consistent expression.
- k. In s. NR 166.04 (intro.), it would be clearer to delete “the following types of”, insert “as follows” before the colon and insert “To” at the beginning of the text of each of the subsections.
- l. In s. NR 166.05 (2), “prjects” should be spelled “projects.”
- m. In s. NR 166.06 (1) (intro.), it would be clearer to replace “is” with “has any of the following purposes.”
- n. In s. NR 166.06 (1) (b), “to” at the end of the second sentence should be replaced with “with any of the following purposes.”
- o. In s. NR 166.06 (1) (d) and (e), the sentences should end with a period instead of a semi-colon.

p. In s. NR 166.06 (1) (f), the comma after “pipe” should be deleted and “to” should be inserted before “improve.”

q. In s. NR 166.06 (1) (h), a hyphen should be inserted between “cost” and “effective.”

r. In s. NR 166.06 (2) (a), it appears that “Dams,” could be replaced with “Construction of.”

s. In s. NR 166.07 (1) (a) (1) (sic), what is the distinction between the “expendable material” referenced in this subdivision and the materials referenced in subd. (8) (sic)? Also, it appears that the comma after “material” should be replaced with “that.”

t. In s. NR 166.07 (1) (a) (7), the comma after “utilities” should be deleted.

u. In s. NR 166.07 (1) (a) (16), will the reader know what a “punch list” is?

v. Section NR 166.07 (1) (a) (22) (sic) includes indirect costs of an eligible cost. However, sub. (2) states that ineligible costs include certain costs not directly associated with or not necessary for the construction or operation of an eligible project. The difference between “indirect costs” and “costs not directly associated” is not clear.

w. In s. NR 166.07 (2) (intro.), it would be helpful to insert “the following” before the colon.

x. In s. NR 166.07 (2) (h), “a” should be inserted before “city attorney.”

y. In s. NR 166.07 (2) (L) (intro.), “one of the following conditions exists” should be inserted before the colon.

z. In s. NR 166.07 (2) (L) 1., both occurrences of the word “official” should be replaced by the word “official’s.”

aa. In s. NR 166.07 (2) (L) 2., “who” should be deleted.

ab. In s. NR 166.07 (3) (b) (intro.), “the following” should be inserted before the colon.

ac. In s. NR 166.08 (2), it appears that the waiver only applies to the time limits in sub. (1). This should be clarified.

ad. In s. NR 166.09, it is unclear what the purpose of sub. (3) is. Could this subsection be deleted?

ae. In s. NR 166.10 (2) (intro.), “all of the following” should be inserted after “shall submit.”

af. In s. NR 166.10 (2) (a) to (d), the semi-colons should be replaced with periods; and in par. (f), “; and” should be replaced with a period. In par. (c), the word “Copy” should be replaced by the word “Copies.”

ag. In s. NR 166.10 (2) (d), it is unclear what “approvable” means.

ah. In s. NR 166.10 (2) (e), it would be helpful if there were a cross-reference to indicate where the reader may find the Department of Administration’s requirements for financial information.

ai. In s. NR 166.11 (intro.), “all of the following conditions have been met” should be inserted before the semi-colon.

aj. Section NR 166.11 (7), should be clarified to indicate whether the water system must operate efficiently and be maintained during the project and after the project.

ak. In s. NR 166.11 (8) and (9), “Public Service Commission” should not be capitalized. Also, in sub. (8), it appears that the phrase “public water commission” should be replaced by the phrase “public service commission.”

al. In s. NR 166.12 (4) (intro.), “all of the following conditions shall be met” should be inserted before the colon.

am. In s. NR 166.12 (4) (b), “the following” should be inserted before the colon.

an. In s. NR 166.12 (4) (c), it appears that the word “which” should be replaced by the word “with.”

ao. In s. NR 166.12 (4) (e), how much is a “portion”?

ap. In s. NR 166.12 (5) (intro.), “one of the following conditions exists” should be inserted before the colon.

aq. In s. NR 166.12 (7) (a), a hyphen should be inserted between “of” and “cost” and “type” should be deleted.

ar. In s. NR 166.14 (1) (intro.), the sentence should end with a colon.

as. In s. NR 166.15 (1) (a), the word “a” should be deleted.

at. In s. NR 166.15 (1) (c), a comma should be inserted after “1996” and “Amendments” and “Section” should not be capitalized.

au. In s. NR 166.15 (1) (f), the comma after “preparation” should be replaced with “or in.” Also, if the department wishes to have access to the records of a contractor or subcontractor, an affirmative duty should be placed on a recipient to include this access in a contract between the recipient and a contractor.

av. In s. NR 166.15 (1) (j) 2., the semi-colons in subpars. a. to i. and “; and” in subpar. j. should be replaced with periods.

aw. In s. NR 166.16 (intro.), “do all of the following” should be inserted before the colon.

ax. In s. NR 166.17 (3), the first sentence should be rewritten to directly impose a duty on a recipient.

ay. In s. NR 166.18 (1) (intro.), “proposing one of the following” should be inserted before the colon. Then, in par. (a), “; or” should be replaced with a period.

az. In s. NR 166.18 (2) (a), “can” should be replaced with “may.”

ba. In s. NR 166.20, it appears that “in the same manner” should be inserted at the end of the last sentence.

bb. In s. NR 166.21 (1) (intro.), “do any of the following” should be inserted before the colon. This comment also applies to s. NR 166.22 (intro.).

bc. In s. NR 166.23 (3) (a) and (b), the semi-colon should be replaced with a period. Also, in par. (b), the “and” after “sought” should be deleted.

bd. In s. NR 166.23 (3) (c), the comma before “and” should be deleted and a comma should be inserted after “and.”

be. In the Note to s. NR 166.25 (intro.), a colon should be inserted before “1”.

bf. In s. NR 166.25 (1) (intro.), a comma should be inserted after “par. (b).” In addition, the subsection should include introductory material grammatically leading into the following material. This comment also applies to par. (a).

bg. In s. NR 166.25 (1) (a) 1. and 2. and (b) 1. and 2., the text before the colon and the colon should be replaced with a subdivision title. For example, “Acute contaminants:” should be replaced with ““Acute contaminants.’.”

bh. In s. NR 166.25 (1) (a) 1. a., b. and c. and (b) 1. a., b. and c., the text before the hyphen and the hyphen should be deleted.

bi. Section NR 166.25 (1) (a) 1. b. uses the format “a and b or c.” This is confusing and should be clarified.

bj. In s. NR 166.25 (1) (a) 2., “five subgroups;” should be replaced with “the 5 subgroups of.” This comment also applies to par. (b) 2.

bk. In s. NR 166.25 (1) (b) 2. a., the last occurrence of the word “exceedence” is misspelled.

bl. In s. NR 166.25 (2), “will” in the first and second sentences should be replaced with “shall.” Also, “**and**” in the third sentence should not be in bold.

bm. In s. NR 166.25 (3) (intro.), the first sentence is not complete and should be rewritten.

bn. In s. NR 166.25 (3) (f), a hyphen should be inserted between “long” and “term.”

bo. In s. NR 166.25 (3) (k), the phrase “waste (liquid or solid)” should be replaced by the phrase “liquid or solid waste.” In par. (L), the phrase “undersized mains (less than 6 inches in diameter)” should be replaced by the phrase “mains less than 6 inches in diameter.”

bp. In s. NR 166.25 (3) (m), “and/or” should be replaced with “or.”

bq. In s. NR 166.25 (4) (b), it appears that “and is implementing” should be replaced with “implemented.”

br. In s. NR 166.25 (4) (e), a hyphen should be inserted between “cross” and “connection.”

bs. In s. NR 166.26 (7), it is unclear what the distinction between a request for a reevaluation and an objection under sub. (5) is.

bt. In s. NR 166.27 (2), “In case” should be replaced with “If.”

bu. In s. NR 166.27 (3), the text should be rewritten as: “Projects shall be funded in the order they appear on the funding list, except that projects may be given a priority or removed from the list, upon written notice by the department, if any of the following situations occur:”.

bv. In s. NR 166.27 (3) (a), “do” in the second sentence should be replaced with “does.”

bw. In s. NR 166.27 (3) (e), the word “failed” should be replaced by the word “fails.” Also, in par. (h), to what does the phrase “refinancing restrictions” refer? A cross-reference would be useful.